

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LA RESOLANA ARCHITECTS, PA,
a New Mexico Corporation,
Plaintiff,

v.

Civ. No. 05-1017 PJK/RHS

RENO INC. dba CLAY REALTORS ANGEL FIRE,
a New Mexico Corporation,
SOUTHWEST INVESTMENT TRUST, LP,
a New Mexico Limited Partnership,
LANCE K. CLAY,
an individual,
GARY PLANTE,
an individual, and
ANGEL FIRE HOME DESIGN,
a New Mexico Corporation,
Defendants,
et al.

**PLAINTIFF'S PROPOSED
ULTIMATE FINDINGS OF FACT**

Plaintiff La Resolana Architects, PA ("La Resolana") herewith provides hereby submits its proposed Ultimate proposed Findings of Fact following a trial to the bench starting on June 12, 2006.

PROPOSED ULTIMATE FINDINGS OF FACT:

1. La Resolana is an architectural firm. The President of La Resolana is Earl Hilchey, who is a licensed architect with the State of New Mexico.
2. Through an assignment dated April 1, 1997 from Mr. Hilchey, La Resolana is the owner of U.S. Copyright Registration No. VA 1-257-022 titled "Angel Fire Project Floorplan 1" for architectural artwork of an elevation view and an interior floor plan ("La Resolana's Copyrighted Architectural Works").

3. La Resolana's copyright registration for La Resolana's Copyrighted Architectural Works is valid and enforceable. Mr. Hilchey is the original creator and sole author of La Resolana's Copyrighted Architectural Works.
4. Gary Plante is the President and Managing Partner of Southwest Investment Trust LP. Southwest Investment Trust is the party who owns the subject land in Angel Fire, New Mexico.
5. Lance Clay is a realtor in Angel Fire, New Mexico, and is the owner of Reno Inc.
6. In approximately December 1996, Mr. Plante and Mr. Clay met with Mr. Hilchey and Larry Jones at Preferred Building Systems in Albuquerque to discuss the development of multi-home residential units proposed to be built in a housing subdivision near Country Club Road in Angel Fire, New Mexico (the "Community"). The proposed subdivision was to consist primarily of patio homes and townhomes.
7. During this approximately December 1996 meeting, Mr. Clay and Mr. Plante requested Mr. Hilchey to design one or more residential unit architectural works which could be a basis for multiple residential units for the Angel Fire Community project, and further requested him to maximize the number of units that could be built for this project.
8. Multiple correspondence was sent by Mr. Hilchey to Mr. Plante by facsimile transmission containing an evolution of interior floor plans, including the overall elevation design of a proposed structure, as well as the arrangement and composition of interior spaces and elements consistent with the elevation design. Each set of revised floor plans was based on conversations Mr. Hilchey had with Mr. Plante, Mr. Clay and/or Daniel Behles (Mr. Behles was identified as a potential investment partner with Mr. Clay and Mr. Plante in the Community). These communications were sent on January 10, 1997, January 15,

1997, January 16, 1997, January 23, 1997. Mr. Hilchey sent almost all of these faxes to the Lamb, Metzger, Lines and Dahl law firm, who represented Southwest Investment Trust LP. Others were sent to Mr. Clay and/or Mr. Behles.

9. At some time prior to January 20, 1997, Mr. Plante wrote down Lance Clay's land-line phone number and gave it to Mr. Hilchey. This phone number also functioned as Mr. Clay's facsimile phone number.
10. Multiple correspondence was also sent by Mr. Hilchey to Mr. Plante, Mr. Clay and/or Mr. Behles by fax containing a proposed site development plan having thirty-eight (38) units, with each unit having a zero lot line adjacent to another unit, so that in total, there were nineteen (19) structures. This correspondence was sent by fax on January 20, 1997, January 24, 1997, February 4, 1997, and March 27, 1997.
11. Daniel Behles sent responding correspondence to Mr. Hilchey by fax on January 22, 1997, asking Mr. Hilchey to make certain modifications to his Hilchey site development plan.
12. Unbeknown to Mr. Hilchey, and only six days after Mr. Hilchey sent Mr. Clay a proposed site development plan containing nineteen (19) structures and a zero lot line on January 22, 1997, Mr. Clay submitted a site development plan to the Village of Angel Fire Planning and Zoning Commission on January 30, 1997. According to the meeting minutes, Mr. Clay's proposed site development plan contained 19 structures having a zero lot line.
13. Mr. Clay sent correspondence to Mr. Hilchey regarding the preparation of a site development plan in the Community, including sometime prior to January 20, 1997 and on March 11, 1997.

14. At some point between February 4, and March 27, 1997, Mr. Hilchey authored an interior floor plan and a front side elevation architectural drawing which are the subject of La Resolana's Copyrighted Architectural Works.
15. Shortly after Mr. Hilchey received the March 27, 1997 fax from Mr. Clay regarding a revised site development plan, Mr. Plante called Mr. Hilchey to inform him the Village of Angel Fire was getting ready to approve the development and that Mr. Hilchey should call Mr. Clay and discuss the preparation of full construction architectural drawings. Mr. Hilchey attempted numerous time to contact Mr. Clay, but Mr. Clay never returned Mr. Hilchey's phone calls.
16. On April 28, 1997, Mr. Hilchey sent a fax to Larry Jones of Preferred Building Systems, providing a copy of La Resolana's Copyrighted Architectural Works so that Mr. Jones could prepare a quote for the project on behalf of Preferred Building Systems. Mr. Jones then provided the quote for the project to Mr. Plante, along with a copy of the exterior facade and the interior floor plan. Mr. Plante admits he received a quote for the project from Mr. Jones.
17. From April, 1998 to May 29, 1998, Mr. Hilchey left numerous voice messages for Mr. Clay and Mr. Plante to discuss the project. Neither Mr. Clay nor Mr. Plante returned any of Mr. Hilchey's messages. As such, on May 29, 1998, Mr. Hilchey notified Mr. Plante and Mr. Clay by letter of La Resolana's copyright rights to the subject architectural artwork, and concluded that if Mr. Plante and Mr. Clay wanted to use the subject artwork, "we need to negoitate [sic] a fair compensation". This May 29, 1998 letter was sent to Mr. Plante's business office (and the address of Southwest Investment Trust LP) located on 300 Central Ave. SW, Albuquerque, NM 87102. Neither Mr. Plante nor Mr. Clay

responded to this letter.

18. In September 1998, twenty months after Mr. Hilchey authored La Resolana's Copyrighted Architectural Works, Angel Fire Home Design was hired by Mr. Clay to prepare the first set of construction drawings (the "AFHD Drawings").
19. While minor differences exist, the AFHD Drawings are substantially similar to La Resolana's Copyrighted Architectural Works.
20. Reno Inc. has publicly advertised in New Mexico and in interstate commerce that the townhomes in the Community are owned by Reno Inc.
21. Mr. Hilchey did not discover that La Resolana's Copyrighted Architectural Works were being built as residential structures in the Community until approximately October, 2003.
22. Mr. Clay, Reno Inc., Mr. Plante and Southwest Investment Trust LP (the "Remaining Defendants"¹) had access to La Resolana's work in light of their on-going communications with Mr. Hilchey and Larry Jones. In light of such communications, the Remaining Defendants had a reasonable opportunity to view and copy La Resolana's Copyrighted Architectural Work, and use it as the basis for the derivative AFHD Drawings twenty months later.
23. The Remaining Defendants used La Resolana's Copyrighted Architectural Works to build substantially similar residential structures using substantially similar architectural designs of the architectural artwork provided by Mr. Hilchey without permission from either Mr. Hilchey or La Resolana.
24. The Remaining Defendants directly, contributorily or vicariously, copied and used La

¹ Defendant Angel Fire Home Designs has settled this lawsuit with La Resolana during a Settlement Conference held on May 22, 2006, and will be dismissed from this case upon the execution of a settlement agreement. As such, the phrase "Remaining Defendants" is used to identify the parties remaining in this lawsuit.

Resolana's Copyrighted Architectural Works substantially in its entirety for the specific purpose of infringing La Resolana's copyright rights without compensation to La Resolana

25. Mr. Clay and Reno Inc. (the "Clay Defendants") have sold 18 of the 32 units available for construction in the Community.
26. Angel Fire Home Design has agreed that it will not promote itself or Charles Hasford as the original creator or author of La Resolana's Copyrighted Architectural Works. It has further agreed to return all documents in its possession regarding the Community to Mr. Hilchey.
27. The Clay Defendants provided substantially similar copies of La Resolana's Copyrighted Architectural Works to Angel Fire Home Design, to the Village of Angel Fire, to contractors, to subcontractors, and to prospective buyers. These copies are mere repackages of La Resolana's Copyrighted Architectural Works, with trivial modifications.
28. Under the direction and control of Mr. Plante, Southwest Investment Trust LP has sold to the Clay Defendants numerous real property lots upon which buildings based upon La Resolana's Copyrighted Architectural Works were built. Southwest Investment Trust LP received from Clay Realty at least \$12,500 per townhome sold. As such, Southwest Investment Trust LP and Mr. Plante have benefited, and continues to benefit, from the sales of buildings which are based upon La Resolana's Copyrighted Architectural Works.
29. The Remaining Defendants' conduct has been malicious, fraudulent, in bad faith, willful, wanton, reckless or otherwise grossly negligent under the circumstances.
30. The Remaining Defendants knowingly made oral and/or written statements concerning

the townhomes built in the Community that were either false or misleading in connection with the sale, lease, or rental of townhomes in the Community. The Remaining Defendants' conduct occurred in the regular course of their trade or commerce, and their statements have been of the type that may, tends to or does, deceive or mislead any person.

31. The Remaining Defendants are attempting to pass off La Resolana's Copyrighted Architectural Works as if they (the Remaining Defendants) were the original designers or creators of the artwork, in a manner calculated to deceive customers and other persons who view such artwork.
32. The Remaining Defendants have failed to state material facts to consumers and viewers of La Resolana's Copyrighted Architectural Works, which have deceived or tends to deceive the purchasing public.
33. The Remaining Defendants have represented to consumers and viewers of La Resolana's Copyrighted Architectural Works that transactions may involve rights, remedies or obligations that they do not involve.
34. As a direct and proximate result of Mr. Clay's, Reno Inc.'s, Mr. Plante's and Southwest Investment Trust LP's (the "Remaining Defendants") conduct, La Resolana has sustained damages under the United States Copyright Act, Section 43(a) of the United States Lanham Act and the New Mexico Unfair Trade Practices Act.

Dated this 30th day of May, 2006.

SOUTHWEST INTELLECTUAL PROPERTY SVCS., LLC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was transmitted by electronic mail to the following counsel of record this 30th day of May, 2006:

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By: Electronically Served 5/30/06